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Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
San Francisco Unified School District)
)
For Renewal of License for Station KALW(FM),)
San Francisco, California)
)
To: Richard L. Sippel,)
Chief Administrative Law Judge)

MB Docket No. 04-191
Facility ID No. 58830
File No. BRED-19970801YA

**JOINT MOTION TO DISMISS
GOLDEN GATE PUBLIC RADIO AS A PARTY**

1. The Enforcement Bureau (the "Bureau") and San Francisco Unified School District ("SFUSD") hereby jointly request that the Presiding Administrative Law Judge ("ALJ") dismiss Golden Gate Public Radio ("GGPR") as a party in the above-captioned proceeding pursuant to section 1.221(e) of the Commission's rules.¹

2. In its July 16, 2004, *Hearing Designation Order and Notice of Apparent Liability for Forfeiture*,² the Commission directed that Golden Gate Public Radio be made a party to this proceeding and that copies of the *HDO* be sent to GGPR at its address of record, 484 Lake Park Avenue, Box 419, Oakland, California 94610-2730.³ The Commission also directed that written appearances be filed within 20 days of the mailing of the *HDO* if a party wished to avail itself of the opportunity to be heard and the

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¹ 47 C.F.R. § 1.221(e).

² *In the Matter of San Francisco Unified School District for Renewal of License for Station KALW(FM), San Francisco, California*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13338, ¶ 27 (2004) ("*HDO*").

³ *Id.* at 13339, ¶ 32.

right to present evidence at a hearing, pursuant to section 1.221 of the Commission's rules.⁴

3. On July 20, 2004, the Commission mailed, via certified mail, return receipt requested, a copy of the *HDO* to GGPR at its address specified in the *HDO*. See Exhibit A.1. The United States Postal Service deemed the mailing "undeliverable" and returned it to the Commission on August 2. See Exhibit A.2. On August 11, the Commission mailed, via certified mail, return receipt requested, a second copy of the *HDO* to Deirdre Kennedy⁵ at 2206 Greenwich Street, # 202, San Francisco, California 94123. See Exhibit B. The Commission subsequently received the signed acknowledgment card indicating that the *HDO* had been delivered to Ms. Kennedy's Greenwich Street address on August 17. See Exhibit C. Based on the mailing date of August 11, 2004, the deadline for GGPR to file its written appearance was August 31. The Commission has no record of GGPR's filing such notice.

4. On August 20, James Shook and Dana Leavitt of the Enforcement Bureau spoke with Jason Lopez,⁶ who confirmed that he was, and remains, a member of GGPR.⁷ Mr. Lopez noted, however, that GGPR has "faded away."⁸ Specifically, according to Mr.

⁴ *Id.* at 13338-39, ¶ 30.

⁵ On November 3, 1997, GGPR filed a *pro se* petition to deny SFUSD's renewal application ("Petition"). In a supplement to the Petition, Ms. Kennedy provided a Declaration dated January 28, 1998, in which she identified herself as a Director of GGPR.

⁶ See Exhibit D, Declaration of Dana E. Leavitt, dated September 13, 2004 ("Leavitt Declaration re Lopez").

⁷ *Id.* See also Declaration of Jason Lopez dated January 28, 1998, which was filed as a supplement to the Petition.

⁸ See Leavitt Declaration re Lopez.

Lopez, although GGPR still exists “technically,” it has been inactive for some time and has no continuing interest in pursuing the Petition it filed in 1997.⁹ On August 27, Mr. Shook and Ms. Leavitt spoke with Deirdre Kennedy, who acknowledged that, although she had been an active member of GGPR at the time the Petition was filed, she was no longer involved in the organization and had not been active for some time.¹⁰ Ms. Kennedy also stated that she believes the organization is in a “suspended” state because it failed to file the papers necessary to keep it active.¹¹

5. The Pre-Hearing Conference for this proceeding occurred on September 8, 2004, which GGPR did not attend, either itself or by its attorney. Moreover, to the Bureau’s knowledge, GGPR made no attempt to enter an appearance via telephone.

6. Section 1.221(e) of the Commission’s rules provides that a party who fails to file a written appearance within 20 days of the mailing of the hearing designation order shall forfeit its hearing rights.¹² The Commission mailed the *HDO* to the last-known address for GGPR and, when that mailing was returned as undeliverable, mailed the order to Ms. Kennedy, whom the Commission’s staff had understood to be a current member of GGPR. On August 17, 2004, Ms. Kennedy acknowledged receiving the *HDO*, yet GGPR failed to file a written appearance within 20 days of that date. Moreover, Mr. Lopez has stated that GGPR no longer wishes to pursue its Petition. Based upon these facts, dismissal of GGPR as a party in this proceeding is warranted.

⁹ *Id.*

¹⁰ See Exhibit E, Declaration of Dana E. Leavitt, dated September 16, 2004.

¹¹ *Id.*

¹² 47 C.F.R. § 1.221(e).

7. Accordingly, the Bureau and San Francisco Unified School District jointly move to dismiss Golden Gate Public Radio as a party in the above-captioned proceeding.

Respectfully submitted,



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September 16, 2004

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EXHIBIT A.1 and A.2

COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300



7000 0600 0023 4484 7818

EXHIBIT A.1



U.S. OFFICIAL MAIL U.S. POSTAGE	
PENALTY PER COPY USE \$300	0488
METER H 589312	

Route
Undefined
Delivery Point
2-B450

08/02/04
16:12:44
Pkg/Bill #
70000600002344847818



Golden Gate Public Radio
484 Lake Park Avenue, Box 419
Oakland, CA 94610-2730

Pro 018
**UNDELIVERABLE AS
ADDRESSED
NO FORWARDING
CARRIER OF FILE**

EXHIBIT A.2

RECEIVED & INSPECTED
AUG 2 2004
FCC - MAIL ROOM

FIRST CLASS MAIL

**RETURN RECEIPT
REQUESTED**

B450

EXHIBITS B and C

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GREENGATE PUBLIC ROW
46 OVERDE KENNEDY
2206 GREENWICH + 202
SAW FRANCISCO, CA 94123

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery
8/1/99

C. Signature

[Signature] ☐ Agent ☒ Addressee

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

7003 1010 0002 4030 3091

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only: No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

NO OFFICIAL USE

Postage	\$ 1.00
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.35
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.65

Postmark Here
AUG 1 2004
MD-USPS-20794

EXHIBIT B

7003 1010 0002 4030 3091

Sent To
GREENGATE PUBLIC ROW 46 OVERDE KENNEDY
Street, Apt. No. 2206 GREENWICH + 202
or PO Box No.
City, State, ZIP+4 SAW FRANCISCO CA 94123

PS Form 3800, June 2002

See Reverse for Instructions

EXHIBIT C

EXHIBIT D


DECLARATION

I, Dana E. Leavitt, under penalty of perjury, do declare as follows:

1. My name is Dana E. Leavitt. I am an attorney licensed to practice law in the states of New York, New Jersey, and Connecticut. I make this declaration based upon my personal knowledge.
2. I am an attorney in the Federal Communications Commission's Enforcement Bureau, Investigations & Hearings Division, 445 12th Street, SW, Washington, DC 20554. Along with James W. Shook, I represent the Enforcement Bureau in the San Francisco Unified School District ("SFUSD") hearing proceeding, MB Docket No. 04-191.
3. On August 20, 2004, I participated in a conference call involving myself, Mr. Shook, and Mr. Jason Lopez, a resident of Oakland, California. During the course of our call, Mr. Lopez stated that he was a member of Golden Gate Public Radio ("GGPR") in 1997 and that, in his capacity as a member of GGPR, he filed a Petition to Deny SFUSD's application for renewal of Station KALW(FM), San Francisco, California. Mr. Lopez further stated that he currently is a member of GGPR.
4. In response to Mr. Shook's inquiry as to whether GGPR is still a viable entity, Mr. Lopez responded that GGPR "has faded away; technically, it still exists, but it hasn't done anything in a while." Mr. Lopez also stated that GGPR has no interest in pursuing the Petition to Deny SFUSD's renewal application.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signed September 13, 2004.



Dana E. Leavitt

EXHIBIT E


DECLARATION

I, Dana E. Leavitt, under penalty of perjury, do declare as follows:

1. My name is Dana E. Leavitt. I am an attorney licensed to practice law in the states of New York, New Jersey, and Connecticut. I make this declaration based upon my personal knowledge.
2. I am an attorney in the Federal Communications Commission's Enforcement Bureau, Investigations & Hearings Division, 445 12th Street, SW, Washington, DC 20554. Along with James W. Shook, I represent the Enforcement Bureau in the San Francisco Unified School District ("SFUSD") hearing proceeding, MB Docket No. 04-191.
3. On August 27, 2004, I participated in a conference call involving myself, Mr. Shook, and Ms. Deirdre Kennedy, a resident of San Francisco, California. During the course of our call, Ms. Kennedy stated that she had been a member of Golden Gate Public Radio ("GGPR") in 1997 and that, in her capacity as a member of GGPR, she filed a Petition to Deny SFUSD's application for renewal of Station KALW(FM), San Francisco, California. Ms. Kennedy further stated that she had been an active member of GGPR six months after it was first formed, but that her involvement diminished after the Petition to Deny was filed. Ms. Kennedy stated that she has no current involvement in GGPR.
4. As to her knowledge of whether GGPR was still in existence, Ms. Kennedy stated that she believes it is "in suspension" because the paperwork needed to keep the organization active was never filed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signed September 16, 2004.


Dana E. Leavitt

CERTIFICATE OF SERVICE

Moris Martinez, a clerk in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this ____th day of September, 2004, sent by first class United States mail, electronic mail (e-mail) and/or delivered by hand, copies of the foregoing "Joint Motion to Dismiss Golden Gate Public Radio as a Party" to:

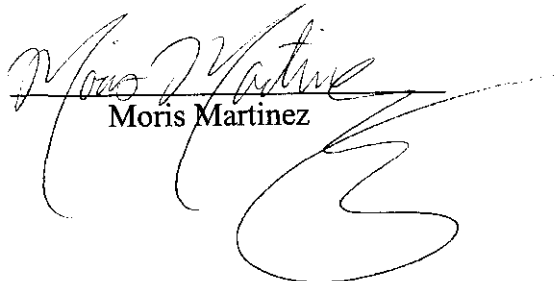
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